

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of VICTOR FORTE, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MARIA FORTE,

Respondent-Appellant.

UNPUBLISHED

April 18, 2006

No. 265600

Kent Circuit Court

Family Division

LC No. 04-052673-NA

In the Matter of BECKY FORTE, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MARIA FORTE,

Respondent-Appellant.

No. 265601

Kent Circuit Court

Family Division

LC No. 04-052674-NA

In the Matter of VICTORIA FORTE, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MARIA FORTE,

Respondent-Appellant.

No. 265602

Kent Circuit Court

Family Division

LC No. 04-052675-NA

Before: Murphy, P.J., and O'Connell and Murray, JJ.

PER CURIAM.

In these consolidated appeals, respondent appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i) and (g). We affirm.

The trial court did not clearly err in finding that the statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A review of the entire record clearly showed that respondent did not make significant progress in treating her diabetes, Post Traumatic Stress Disorder, and other unspecified psychotic disorders, or in improving her parenting skills, and that there was no reasonable expectation that she would do so within a reasonable amount of time. She had partially cooperated with services since 1999 with no appreciable improvement, and the evidence showed that respondent was not completely motivated and that her cooperation would remain partial and result in little benefit over the long-term.

Further, the evidence did not show that termination of respondent's parental rights was clearly contrary to the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The trial court did not err in going one step further and determining that termination was in their best interests. Given the fact that respondent failed to improve her ability to care for the children despite a plethora of services having been provided for five years, it was clear that being parented by someone else was in Victor's best interests, and severing the ties with respondent would allow him emotional stability. Respondent was not able to meet Becky's and Victoria's special needs, and it was in Becky's best interests to obtain some level of permanence in their lives.

Additionally, the trial court did not err in determining that petitioner provided respondent reasonable reunification services despite respondent's low intellectual capacity, illiteracy, and lack of English-speaking skills. Respondent received a plethora of services from numerous agencies over five years, most of which were in Spanish or involved an interpreter, and the lower court record showed that numerous caseworkers and service providers serviced respondent more than effectively. A guardian ad litem was also appointed for respondent. A review of the entire record does not show that respondent lacked such intellectual capacity or the capacity to understand English that she did not know what was required of her.

Lastly, respondent was not denied the effective assistance of counsel. To establish a claim of ineffective assistance of counsel, respondent is required to show that her attorney's performance was prejudicially deficient, and that under an objective standard of reasonableness the attorney made an error so serious that counsel was not functioning as an attorney as guaranteed under the Sixth Amendment. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994). To demonstrate prejudice, the respondent must show the existence of a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Strickland v Washington*, 466 US 668, 690; 104 S Ct 2052; 80 L Ed 2d 674 (1984). A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.* at 694.

Counsel did not err in waiving further findings of probable cause at the continued preliminary hearing. The petition had already been authorized, and additional evidence provided probable cause to retain Becky in foster care until respondent made necessary changes in housing and demonstrated an ability to care for Becky. Counsel's decision to waive further findings of probable cause did not affect the outcome of the preliminary hearing. There is no indication that the outcome of this proceeding would have been different but for counsel's actions.

Respondent was not prejudiced by counsel's failure to bring a motion for recusal of the trial court judge, who had found respondent in contempt of court in Victor's juvenile delinquency hearing, thus giving rise to this neglect proceeding, and there is no evidence on the record, or set forth by respondent in her appellate brief, that the outcome of this neglect proceeding would have been different if presided over by a different judge. Termination was the result of respondent's lack of compliance with her treatment plan and failure to benefit from services over many years, not the particular mindset of the trial court judge.

Counsel did not err in declining to call witnesses to testify regarding respondent's communication difficulties and her progress in obtaining housing and employment. The evidence that may have been presented by witnesses for respondent was admitted through other sources, and there is no indication that witnesses would have improved the trial court's view of respondent or contributed information that would have changed the outcome of the proceeding.

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Christopher M. Murray